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Federal Maritime Commission
Office of the Secretary

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BEFORE THE
FEDERAL MARITIME COMMISSION

D.F. YOUNG, INC.,	:	
Complainant,	:	
v.	:	
NYK LINE (NORTH AMERICA), INC.,	:	DOCKET NO.: 16-02
Respondent.	:	

**COMPLAINANT D.F. YOUNG, INC.'S OPPOSITION TO RESPONDENT NYK LINE
(NORTH AMERICA), INC.'S MOTION FOR LEAVE TO AMEND ANSWER**

Complainant, D.F. Young, Inc. ("Complainant"), by and through its undersigned counsel, and pursuant to 46 C.F.R. §502.66 hereby opposes the Motion to Amend Answer ("the Motion") filed by Respondent NYK Line (North America), Inc. ("Respondent"). Respondent's Verified Answer is signed by a party as true and is no different than testimony or any other admission.

I. BRIEF FACTUAL BACKGROUND

[REDACTED]

[REDACTED]

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II. BRIEF PROCEDURAL BACKGROUND

A. Initial Pleadings

Complainant commenced the present action by filing a Verified Complaint ("the Complaint") on or about January 29, 2016. A copy of the Complaint (without exhibits) is attached as **Exhibit F**. Respondent filed its Verified Answer on or about March 8, 2016 ("the Answer"). A copy of the Answer is attached as **Exhibit G**. Respondent admits in Paragraph 5 of its Answer that its principal place of business is located in Secaucus, NJ.

(See *id.*, ¶5). In response to Paragraph 8 of the Verified Complaint, Respondent answered:

Admits that Respondent had in effect its Tariff NYKS-156 **applicable to the shipments in question**, and except as so admitted, denies the truth of the allegations of para. 8.

(See Exhibit *id.*, ¶8) (emphasis added). Respondent further admitted:

that on or about September 24, 2015, Complainant ... served Respondent with a Demand ("the First Demand") for freight forwarding compensation ... **pursuant to the terms of Rule 9 of Respondent's applicable tariff** ...

(See *id.*, ¶23) (emphasis added). Respondent repeatedly "specifically denies that Complainant is entitled to such freight forwarding compensation, **since it did not perform freight forwarding services** on behalf of Respondent." (See *id.*, ¶¶30, 31, 36, and 37) (emphasis added).

The Answer includes only three asserted, affirmative defenses, all of which are based on the position taken by Respondent that Complainant "performed no freight forwarding services." (See *id.*, p. 11). The Verified Answer includes a notarized, sworn Verification from John Grbic, Senior Director of "RoRo Trade" for Respondent ("Grbic"). (See *id.*, p. 13). The Answer does not mention or in any way reference the Ford/NYKK Agreement executed over 3 years prior.

B. Written Discovery

[REDACTED]

C. Respondent's Motion to Amend Answer

On or about August 24, 2016, Respondent filed the subject Motion. A copy of the Motion is attached as **Exhibit I**. In it, Respondent states that it seeks to remove the description contained in Paragraph 8 of its Answer that Tariff 156 is "applicable to the shipments in question" and to include the following fourth affirmative defense that the existence of the Ford/NYKK Agreement bars Complainant's claimed compensation. (See Exhibit I, 3-4, 10, and 18).

Respondent contends that it now seeks to make these amendments, over five (5) months after its Answer was filed, because "[Respondent has] since learned that the [Ford/NYKK Agreement] did not incorporate that tariff and the tariff does not say that it applies to shipments under a Service Contract." (See *id.*, p. 4). Respondent seeks to have its Proposed Amended Answer verified again by Grbic. (See *id.*, p. 19).

III. AUTHORITY

A. Judicial Admissions

A party's assertion of fact in a pleading is a judicial admission by which it is bound.² The federal circuit courts have made it clear that it judicial admissions, which "have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact," "are limited to formal admissions made in, for example, a complaint, answer, or pretrial order."³

Judicial admissions are proof possessing the highest probative value, establishing facts not only beyond the need of evidence to prove them, but beyond the power of evidence to controvert them.⁴ A fact admitted by answer is no longer a fact in issue.⁵ A party may not rebut a judicial admission made in its pleadings with new evidence or testimony.⁶

B. Pleadings

The Federal Maritime Commission has expressly rejected the notion that pleadings in Shipping Act proceedings are not "critical" or are "unimportant," or that they "do little more than indicate generally the type of litigation is involved."⁷ The Commission has also held that the fact that Commission proceedings are "traditionally more informal than judicial proceedings" does not contravene the "sound administrative practice" of applying the pleading standards as expressed in "*Iqbal/Twombly*"⁸ in Shipping Act proceedings.⁹ The Commission has

² *Carolina Marine Handling, Inc. v. South Carolina State Ports Authority, et al.*, 2006 FMC LEXIS 8, *28.

³ (See *Reliable Contr. Group, LLC v. Dep't of Veterans Affairs*, 779 F.3d 1329, 1334 (Fed. Cir. 2015)).

⁴ (See *Hill v. Federal Trade Com.*, 124 F.2d 104, 106 (5th Cir. 1941)).

⁵ (See *id.*).

⁶ (See *Giddens v. Cmty. Educ. Ctrs., Inc.*, 540 Fed. Appx. 381, 390 (5th Cir. Tex. 2013)).

⁷ (See *Maher Terminals, LLC v. The Port Authority of New Jersey*, 2015 FMC LEXIS 43, *30) (indicating that any such notion advanced in *Tak Consulting Engineers v. Bustani*, 28 S.R.R. at 589, "is not the current view" of pleadings.)

⁸ See *Ashcroft v. Iqbal*, 556 U.S. 662 (U.S. 2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (U.S. 2007).

further stated that the *Iqbal/Twombly* standard “coexists” with Federal Rules of Civil Procedure 15 permitting amended pleadings. Rule 15 provides that courts should freely give leave to amend pleadings only “when justice so requires.” Fed.R.Civ.P. 15(a)(2).

Rule 66 of the FMC Rules of Practice and Procedure states:

Amendments or supplements to any pleading (complaint, Order of Investigation and Hearing, counterclaim, crossclaim, third-party complaint, and **answers** thereto) **will be permitted or rejected, either in the discretion of the Commission or presiding officer ...**

46 C.F.R. §502.66(a) (emphasis added).

Valid grounds for denying leave to amend include “undue delay, *bad faith* or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] *futility of amendment, etc.*”¹⁰

Though the Commission “typically allows amendments liberally,” this is usually done in order to allow a plaintiff the change to amend its complaint in order to avoid the misfortune of dismissal “where a more carefully drafted complaint might state a claim,” not to allow a Respondent to change factual allegations of which it was fully aware at the time of a previous pleading. (See *Maier*, 2015 FMC LEXIS 43 at *115-116; see also 46 C.F.R. §502.62(a)(3)(v)).

IV.ARGUMENT

A. Respondent’s multiple assertions that Tariff 156 applies to the subject shipments is a judicial admission prohibiting amendment.

In its Answer filed on March 8, 2016, Respondent conceded that Tariff 156 was

⁹ (See *id.* at *32).

¹⁰ *Anchor Shipping Co. v. Alianca Navegacao E Logistica LTDA*, 29 S.R.R. 1047, 1060 (ALJ 2002) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (U.S. 1962) (emphasis in original)).

[REDACTED]

C. Respondent's proposed amendments would be futile given the scope of the referenced contract and other admissions made by Respondent.

[REDACTED]

[REDACTED]

V. CONCLUSION

Respondent asks permission to make changes that are against its already sworn Answer, to be verified by the same person who swore to the facts in that Answer, and that will only serve to needlessly complicate remaining discovery. Justice does not require that such unnecessary measures be allowed; it requires that they be prevented.

WHEREFORE for the reasons explained above, Complainant D.F. Young, Inc. respectfully request that the Commission deny the Motion to Amend Answer filed by Respondent NYK Line (North America), Inc.

Respectfully submitted,

LAW OFFICES OF THOMAS J. WAGNER, LLC

Date: August 30, 2016

By: _____

Thomas J. Wagner, Esquire
Gabriel C. Major, Esquire
Law Offices of Thomas J. Wagner, LLC
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1628 John F. Kennedy Blvd.
Philadelphia, PA 19103
tjwagner@wagnerlaw.net
PA Bar ID No. 52876
Tel.: 215.790.0761
Attorneys for Complainant, D. F. Young, Inc.

[REDACTED]

**BEFORE THE
FEDERAL MARITIME COMMISSION**

D.F. YOUNG, INC.,	:	
Complainant,	:	
v.	:	
NYK LINE (NORTH AMERICA), INC.,	:	DOCKET NO.: 16-02
Respondent.	:	
Defendants.	:	

CERTIFICATE OF SERVICE

The undersigned certifies that on the date noted below he served a true and correct copy of the foregoing Complainant D.F. Young, Inc.'s Opposition to Respondent's Motion to Amend Answer via U.S. First Class Mail and email on the following at the addresses provided:

Paul M. Keane
Joseph De May, Jr.
Cichanowicz Callan Keane & De May, LLP
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White Plains, NY 10606
pkeane@cckd-ny.com, jdemay@cck-ny.com

Attorneys for Respondent, NYK Line (North America), Inc.

Respectfully submitted,

LAW OFFICES OF THOMAS J. WAGNER, LLC

Date: August 30, 2016

By: _____

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Gabriel C. Major, Esquire
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Philadelphia, PA 19103
tjwagner@wagnerlaw.net
Tel.: 215.790.0761
PA Bar ID No. 52876

Attorney for Complainant, D. F. Young, Inc.

EXHIBIT A

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Exhibit F

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO.: _____

D.F. YOUNG, INC.,

**1235 Westlakes Drive
Suite 255
Berwyn, PA 19312.**

COMPLAINANT

V.

NYK LINE (NORTH AMERICA) INC.,

**300 Lighting Way
5th Floor
Secaucus, NJ 07094**

RESPONDENT

VERIFIED COMPLAINT

**Thomas J. Wagner, Esq.
Law Offices of Thomas J. Wagner, LLC
8 Penn Center, 6th Floor
1628 John F. Kennedy Boulevard
Philadelphia, PA 19103
Attorney for Complainant**

VERIFIED COMPLAINT

Complainant, D.F. Young, Inc. ("Complainant" or "DFY") files this Verified Complaint against Respondent, NYK Line (North America), Inc. ("Respondent" or "NYK") pursuant to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 ("the Shipping Act"), 46 U.S.C. §§ 40101, *et seq.*, the Federal Maritime Commission ("FMC")'s authority under 46 U.S.C. §41301, and pursuant to FMC regulation 46 CFR §515.

I. COMPLAINANT

1. Complainant is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.
2. Complainant's principal place of business is 1235 Westlakes Drive, Suite 255, Berwyn, PA 19312.
3. Complainant is in the business of providing services as an ocean transportation intermediary as defined and described in 46. U.S.C. §40102(19) and 46 CFR §515.2(m), operates as a non-vessel operating common carrier ("NVOCC") as defined and described in 46. U.S.C. §40102(16) and 46 CFR §515.2(k), and as licensed by the FMC under License No. 656F.
4. Complainant has a Customhouse Broker License, License No. 1259.

II. RESPONDENT

5. Respondent is, upon belief and information, a corporation organized and existing under the laws of the State of New York, with a principal place of business at 300 Lighting Way, 5th Floor, Secaucus, NJ 07094.

6. Respondent is a common carrier of goods by water for hire, as defined and described in 46 U.S.C. §§40102(6) and 40102(17), as well as 46 CFR §§515.2(e) and (l).

III. JURISDICTION

7. The FMC has jurisdiction over this Complaint pursuant to 46 U.S.C. §§41301, *et seq.* and pursuant to 46 U.S.C. §§40904, 41102, and 41104, as well as 46 CFR §515.42, as Complainant seeks reparations related to freight forwarding compensation withheld by Respondent that is required by Respondent's applicable tariffs.

IV. STATEMENT OF FACTS AND MATTERS COMPLAINED OF

A. TARIFFS

8. At all times applicable to the facts alleged in this Complaint, Respondent had tariffs in effect that established the rate and requirements for compensation to entities providing freight forwarding services on shipments accepted by Respondent as a common carrier.
9. Such tariffs stated, "[e]xcept as otherwise provided, compensation to a freight forwarder shall be one-and-one-fourth percent (1.25%) of the applicable freight rates and Outport Arbitraries to ports" named in said tariffs."
10. Such tariffs also stated that "[p]ursuant to the United States Tariff Act of 1986, Carriers shall pay freight forwarder compensation on all Bill of Lading charges when such compensation is claimed by an FMC Licensed Freight Forwarder which is also a Treasury Department Licensed Customs House Broker."
11. Such tariffs further provide that "[c]laims for freight forwarder compensation must be presented to the Carrier within six (6) months of the sailing of the vessel from the port at which the cargo in question was loaded."

B. COMPLAINANT FREIGHT FORWARDING

12. Beginning on or about March 25, 2015, Complainant performed freight forwarding services related to shipments of automobiles from the Ford Motor Company and its affiliated companies ("Ford") by, *inter alia*, arranging for shipment of such vehicles on vessels owned and/or operated by Respondent and/or its agents or affiliates.
13. On or about April 2, 2015, Complainant and Respondent entered into an Agreement in order to simplify the issuance of bills of lading for transportation of shipments from Ford by Complainant on Respondent's vessels ("the Agreement").
14. Though Respondent proposed a paragraph to the Agreement which would have waived any brokerage or freight forwarder compensation, Complainant expressly refused to include such a provision.
15. The Agreement included an integration clause that stated that "[t]his Agreement sets forth the complete understanding and agreement of the parties, and can be amended only in writing signed by the party against whom enforcement is sought."
16. The freight forwarding services performed by Complainant included engaging, booking, securing, reserving, and/or contracting directly with Respondent and/or its agents for space aboard its/their vessels and/or confirmed availability of that space for Ford shipments.
17. Furthermore, Complainant prepared and processed the ocean bills of lading and related documents respective of Ford shipments placed on Respondent's vessels.
18. Complainant had no beneficial interest in any of the Ford shipments for which it performed freight forwarding services and for which it arranged shipment on Respondent's vessels.
19. At all relevant times, Complainant held a valid FMC license.

20. To date, Complaint has provided freight forwarding services on hundreds of Ford shipments placed on Respondent's vessels, and continues to do so.
21. The freight charges Respondent has received from Ford shipments placed on its vehicles as a result of Complainant's freight forwarding to date exceed \$20,000,000.00.
22. To date, Respondent has provided no compensation to Complainant for any of the freight forwarding services performed on any of the Ford shipments placed on the vessels of Respondent and/or its agents or affiliates.

C. DEMANDS FOR COMEPENSATION

First Demand for Compensation

23. On or about September 24, 2015, Complainant, through the undersigned, served Respondent with a demand ("the First Demand") for freight forwarding compensation in the amount of **\$129,592.28**, plus 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fees, and/or surcharges related to certain Ford shipments placed on Respondent's vessels, pursuant to the terms of Rule 9 of Respondent's applicable tariff, 46 CFR §§515.41, 515.42, and 46 U.S.C. §§40904 and 41102 *et seq.* (See Demand Letter dated September 24, 2015, **Attachment A**).
24. Enclosed with the First Demand was an executed Certification by Denise Traynor, Complainant's Chief Financial Officer, in compliance with the requirements of 46 CFR §515.42 and 46 U.S.C. §40904. (See Certification of Denise Traynor dated September 24, 2015, **Attachment B**).
25. Also enclosed with the First Demand was a copy of Complainant's FMC Ocean Transportation Intermediary/Ocean Freight Forwarder License. (See FMC Ocean

Transportation Intermediary/Ocean Freight Forwarder License No. 656F, **Attachment C**).

26. Also enclosed with the First Demand was a copy of Complainant's License for Customhouse Broker from the U.S. Treasury Department, Bureau of Customs. (See License for Customhouse Broker Serial No. 1259, **Attachment D**).

27. Also enclosed with the First Demand were copies of all of the individual bills of lading for shipments for which Complainant sought compensation, along with reference charts for each shipments, and a separate summary of the applicable, total freight charges and freight forwarding charges for those bills of lading. (See Bills of Lading Reference Charts, **Attachment E**, and Summary of Charges, **Attachment F**).

28. Respondent subsequently denied Complainant's First Demand.

Second Demand for Compensation

29. On or about December 22, 2015, Complainant, again through the undersigned, served Respondent with a second demand for compensation ("the Second Demand"). (See Demand Letter dated December 22, 2015, **Attachment G**).

30. The Second Demand included the previously demanded sum of \$129,592.28 and subsequent freight forwarding charges in the amount of \$73,588.58, for a total of \$203,180.86, together with 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fees, and/or surcharges related to certain Ford shipments placed on Respondent's vessels not referenced in Complainant's First Demand.

31. All additional shipments for which freight forwarder compensation was sought in the Second Demand took place within 6 months of service of the Second Demand.

32. The Second Demand included an executed Certification by Denise Traynor, Complainant's Chief Financial Officer, in compliance with the requirements of 46 CFR §515.42 and 46 U.S.C. §40904. (See Certification of Denise Traynor dated December 15, 2015, **Attachment H**).
33. The Second Demand also included the FMC Ocean Transportation Intermediary/Ocean Freight Forwarder License and Customhouse Broker License already provided to Respondent in the First Demand.
34. The Second Demand also included copies of all of the individual bills of lading for shipments for which Complainant sought compensation (excluding the bills of lading included in the First Demand), along with reference charts for such shipments, and a separate summary of the applicable, total freight charges and freight forwarding charges for the bills of lading referenced in the Second Demand. (See Bills of Lading Reference Charts, **Attachment I**, and Summary of Charges, **Attachment J**).

Third Demand for Compensation

35. On or about January 13, 2016, Complainant, again through the undersigned, served Respondent with a third demand for compensation ("the Third Demand"). (See Demand Letter dated January 12, 2016, **Attachment K**).
36. The Second Demand included the previously demanded sum of \$203,180.86 and subsequent freight forwarding charges in the amount of \$49,596.03 for an updated total of \$252,776.89, together with 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fees, and/or surcharges related to certain Ford shipments placed on Respondent's vessels not referenced in

Complainant's First or Second Demand.

37. All additional shipments for which freight forwarder compensation was sought in the Third Demand took place within 6 months of service of the Third Demand.
38. The Third Demand included an executed Certification by Denise Traynor, Complainant's Chief Financial Officer, in compliance with the requirements of 46 CFR §515.42 and 46 U.S.C. §40904. (See Certification of Denise Traynor dated January 13, 2016, **Attachment L**).
39. The Third Demand also included the FMC Ocean Transportation Intermediary/Ocean Freight Forwarder License and Customhouse Broker License already provided to Respondent in the First and Second Demand.
40. The Third Demand also included copies of all of the individual bills of lading for shipments for which Complainant sought additional compensation (excluding the bills of lading included in the First or Second Demand), along with reference charts for such shipments, and a separate summary of the applicable, total freight charges and freight forwarding charges for the bills of lading referenced in the Third Demand. (See Bills of Lading Reference Charts, **Attachment M**, and Summary of Charges, **Attachment N**).
41. To date, Respondent has yet to respond to Complainant's Second or Third Demand.

V. STATEMENT OF VIOLATIONS

42. Title 46 U.S.C. Section 41102 provides:

A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

46 U.S.C. §41102(c)

43. Title 46 U.S.C. Section 40501 states:

Each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established.

46 U.S.C. §40501(a)(1). Section 40501 also states that “[a] tariff under subsection (a) shall ... state the level of compensation, if any, of any ocean freight forwarder by carrier or conference; ...” 46 U.S.C. §40501(b)(3).

44. Title 46 U.S.C. Section 40904 states that compensation to common carriers to ocean transportation intermediaries is appropriate “only when the ocean freight forwarder has certified in writing that it holds an ocean transportation intermediary’s license (if required under section 40901 of this title [46 U.S.C. §40901]) and has (1) engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and (2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment.” 46 U.S.C. §40904(a). Section 40904 also states that “[a]n ocean freight forwarder may not receive compensation from a common carrier for a shipment in which the ocean freight forwarder has a direct or indirect beneficial interest.” 46 U.S.C. §40904(c).

45. Title 46 CFR Section 515.42 provides:

When a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the forwarder has provided a certification as prescribed in paragraph (c) of this section ...

46 CFR §515.42(b). Section 515.42 also provides:

When a licensed freight forwarder is entitled to compensation, the forwarder shall provide the common carrier with a certification which indicates that the forwarder has performed the required services that entitle it to compensation. The required certification may be provided electronically by the forwarder or may be placed on one copy of the relevant bill of lading, a summary statement from the forwarder, the forwarder's compensation invoice, or as an endorsement on the carrier's compensation check. Electronic certification must contain confirmations by the forwarder and the carrier identifying the shipments upon which forwarding compensation may be paid. Each forwarder shall retain evidence in its shipment files that the forwarder, in fact, has performed the required services enumerated on the certification. The certification shall read as follows:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No. 2, issued by the Federal Maritime Commission and has performed the following services:

- (1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and
- (2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

46 CFR §515.42(c). Section 515.42 also provides:

No licensed freight forwarder, or employee thereof, shall accept compensation from a common carrier which is different from that specifically provided for in the carrier's effective tariff(s).

46 CFR §515.42(d). Section 515.42 also provides:

A licensed freight forwarder may not receive compensation from a common carrier with respect to any shipment in which the forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate, officer, director, agent, or executive of such forwarder has a beneficial interest.

46 CFR §515.42(i).

46. Title 46 U.S.C. Section 41305 states that if a Complaint is filed with the FMC "within the period specified in section 40301(a) of this title ... the Federal Maritime Commission shall

direct the payment of reparations to the complainant for actual injury caused by violation of this part [46 U.S.C. §40101, *et seq.*]." 46 U.S.C. §41305 (b). Section 41305 also provides that prevailing parties may be awarded reasonable attorney fees in any action brought under section 41301. 46 U.S.C. §41305 (e).

47. Respondent has violated Title 46 U.S.C. Section 41102 and Title 46 CFR Section 515.42 by refusing to compensate Complainant for the freight forwarding services performed on Ford shipments placed on vessels owned/and or operated by Respondent and/or its agents or affiliates, for which Respondent received freight charges, according to the terms of the Respondent's applicable tariffs in effect when such shipments were made, and when demands were made by Complainant to Respondent for such compensation.

VI. DAMAGES

48. As a result of Respondent's aforementioned and continuing violations of the Ocean Shipping Reform Act, Complaint has sustained, and continues to sustain, injuries and damages in excess of \$252,776.89.

49. The total demand specified in the Third Demand of \$252,776.89 does not include all compensation owed by Respondent to Complainant as of January 13, 2016, as the Third Demand did not include all bills of lading for shipments processed prior to that date.

50. Furthermore, amount of damages sustained by Complaint continues to accrue as Complainant places further Ford Shipments on vessels owned and/or operated by Respondent and/or its agents or affiliates, and Respondent continues to withhold compensation owed to Complainant.

51. Complainant will supplement its claimed damages as further demands for compensation are

made upon Respondent.

VII. PRAYER FOR RELIEF

52. Statement regarding ADR procedures: Alternative dispute resolution procedures were not used prior to filing this Complaint, and Complainant has not consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution.
53. Complainant seeks an award of reparations of \$252,776.89 for actual injuries caused to it by Respondent as a result of the aforementioned violations, plus further amounts as may be demonstrated after further demands for compensation are made on Respondent as a result of the violations to the same applicable statutes and regulations.
54. Complainant also seeks an award of interest on all compensation owed to it by Respondent from the date any such compensation became due.
55. Complainant also seeks an award for all reasonable attorney's fees related to bringing this Complaint.
56. Should evidence show that respondent has also violated Title 46 U.S.C. §41103(3), Complaint seeks a payment of additional amounts, not exceeding twice the amount of any award for injuries.
57. Complainant requests that a hearing in this matter be held in Philadelphia, Pennsylvania, or, alternatively, in Washington, D.C.
58. Complainant seeks such other relief or award as the FMC shall determine.

Respectfully submitted,

LAW OFFICES OF THOMAS J. WAGNER, LLC

Date: January 28 2016

By: _____

Thomas J. Wagner, Esquire
Law Offices of Thomas J. Wagner, LLC
8 Penn Center, 6th Floor
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103
tjwagner@wagnerlaw.net
Tel.: 215.790.0761
PA Bar ID No. 52876
Attorney for Complainant, D. F. Young, Inc.

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF CHESTER)

I am the Chief Financial Officer of the corporate Complainant, D. F. Young, Inc., in the action herein. I have read the annexed Complaint and know the contents thereof, and the same are true and correct to the best of my knowledge. As to those matters therein which are stated to be alleged upon information and belief, I believe them to be true based upon facts, records, and/or other pertinent information in Complainant's files.

Subscribed and sworn to before me, a notary public in and for the Commonwealth of
Pennsylvania, County of Chester, this 13th day of JANUARY, 2016.



My Commission Expires: 9/11/2017
Commission No.: 1251897

Exhibit G

BEFORE THE U.S. FEDERAL MARITIME COMMISSION

DOCKET NO.: 16-02

D. F. YOUNG, INC.,

1235 Westlakes Drive
Suite 255
Berwyn, PA 19312

COMPLAINANT

v.

NYK LINE (NORTH AMERICA) INC.,

300 Lighting Way
5th Floor
Secaucus, NJ 07094

RESPONDENT

VERIFIED ANSWER

Paul M. Keane
Joseph De May, Jr.
Cichanowicz Callan Keane & De May, LLP
50 Main Street, Suite 1045
White Plains, NY 10606
(212) 344-7042
Attorneys for Respondent

Respondent, NYK LINE (NORTH AMERICA) INC. ("Respondent"), files this Verified Answer to the Verified Complaint of Complainant, D. F. YOUNG, INC., and alleges as follows:

I. COMPLAINANT

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 1.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 2.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 3.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 4.

II. RESPONDENT

5. Admits the allegations of para. 5 except denies that it is organized or exists under the laws of the State of New York.
6. Admits that Nippon Yusen Kaisha is an ocean common carrier (VOCC) as defined and described in 46 U.S.C. §§ 40102(6) and 40102(17), as well as 46 C.F.R. §§ 515.26 and (1), and that Respondent is the U.S. representative of Nippon Yusen Kaisha in North America, and except as so admitted, denies the truth of the allegations of para. 6.

III. JURISDICTION

7. Denies the truth of the allegations of para. 7.
-

IV. STATEMENT OF FACTS AND MATTERS COMPLAINED OF

A. TARIFFS

8. Admits that Respondent had in effect its Tariff NYKS-156 applicable to the shipments in question, and except as so admitted denies the truth of the allegations of para. 8.

9. Denies the truth of the allegation of para. 9 and specifically denies that the language quoted therein was ever in NYK Tariff NYKS-156.

10. Denies the truth of the allegation of para. 10 and specifically denies that the language quoted therein was ever in NYK Tariff NYKS-156.

11. Denies the truth of the allegation of para. 11 and specifically denies that the language quoted therein was ever in NYK Tariff NYKS-156.

B. COMPLAINANT FREIGHT FORWARDING

12. Denies the truth of the allegations of para. 12.

13. Admits that on or about April 2, 2015, Complainant and Respondent entered into an agreement to allow Complainant on behalf of Ford to print bills of lading remotely and except as so admitted denies the truth of the allegations of para. 13; and specifically denies that "transportation of shipments from Ford" was to be "by Complainant."

14. Admits that there were negotiations in regard to the Agreement and further admits that the Agreement sets forth the complete understanding of the parties, and except as so admitted denies the truth of the allegations of para. 14 and specifically

denies that Respondent ever agreed to pay Complainant brokerage or freight forwarder compensation.

15. Admits that the Agreement included a clause which stated inter alia "this Agreement sets forth the complete understanding and agreement of the parties and can be amended only in writing signed by the party against whom enforcement is sought." Except as so admitted denies the truth of the allegations of para. 15.

16. Denies the truth of the allegations of para. 16 and specifically denies that Complainant performed any freight forwarding services on behalf of Respondent.

17. Admits that Complainant remotely printed bills of lading related to the 4 shipments on behalf of Ford and accept as so admitted denies the truth of the allegations of para. 17.

18. Denies knowledge or information sufficient to form a belief as to the truth of allegations of para. 18.

19. Denies knowledge or information sufficient to form a belief as to the truth of allegations of para. 19.

20. Denies the truth of the allegations of para. 20 and specifically denies that the Complainant performed any freight forwarding services on behalf of Respondent in regard to the Ford shipments.

21. Denies the truth of the allegations of para. 21.

22. Admits that Respondent has provided no compensation to Complainant for freight forwarding services and except as so admitted denies the truth of the allegations of para. 22; and specifically denies that Complainant performed any freight forwarding services on behalf of Respondent.

C. DEMAND FOR COMPENSATION

First Demand for Compensation

23. Admits that on or about September 24, 2015, Complainant, through its counsel, served Respondent with a Demand ("The First Demand") for freight forwarding compensation in the amount of \$129,592.28 plus 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fee and/or surcharges related to certain Ford shipments placed on Respondent's vessel pursuant to the terms of Rule 9 of Respondent's applicable tariff, 46 C.F.R §§ 515.41 515.42 and 46 U.S.C §§ 40904 and 41102 et seq., and except as so admitted denies the truth of the allegations of para. 22; and specifically denies that Complainant was entitled to such freight forwarding compensation.

24. Admits that a Certification by Denise Traynor was enclosed with the First Demand and except as so admitted denies the truth of the allegations of para. 24; and specifically denies that Complainant was entitled to freight forwarding compensation.

25. Admits that with the First Demand was Complainant's F.M.C. Ocean Transportation Intermediary/Ocean Freight Forwarder License and except as so admitted denies the truth of the allegations of para. 25; and specifically denies that Complaint was entitled to freight forwarder compensation.

26. Admits that a copy of Complainant's License for Customhouse Broker from the U.S. Treasury Department, Bureau of Customs was enclosed with the First Demand and except as so admitted denies the truth of the allegations of para. 26; and specifically denies that Complainant is entitled to freight forwarding compensation.

27. Admits that copies of individual bills of lading for shipments for which complainant sought compensation along with reference charts for each shipment and a

separate summary of the applicable total charges and freight forwarding charges for those bills of lading was enclosed with the First Demand and except as so admitted denies the truth of the allegations of para. 27; and specifically denies that Complainant was entitled to freight forwarding compensation.

28. Admits the truth of the allegations of para. 28.

Second Demand for Compensation

29. Admits that a Second Demand for Compensation was made by Complainant on or about December 22, 2015 and except as so admitted denies the truth of the allegations of para. 29; and specifically denies that Complainant was entitled to freight forwarding compensation.

30. Admits that the Second Demand included the previously demanded sum of \$129,592.28 and subsequent alleged freight forwarding charges in the amount of \$73,588.58 for a total of \$203,180.86 together with 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fee and/or surcharges related to certain Ford shipments placed on Respondent's vessel not referenced in plaintiff's First Demand and except as so admitted denies the truth of the allegations of para. 30; and specifically denies that Complainant is entitled to such freight forwarding compensation since it did not perform freight forwarding services on behalf of Respondent.

31. Admits that all additional shipments for which freight forwarder compensation was sought in the Second Demand took place within 6 months of the service of the Second Demand and except as so admitted denies the truth of the allegations of para. 31; and specifically denies that Complainant is entitled to freight forwarder compensation since it did not perform freight forwarding services on behalf of Respondent.

32. Admits that a Certification by Denise Traynor was enclosed with the Second Demand and except as so admitted denies the truth of the allegations of para. 27; and specifically denies that Complainant was entitled to freight forwarding compensation.

33. Admits that with the Second Demand was Complainant's F.M.C. Ocean Transportation Intermediary/Ocean Freight Forwarder and except as so admitted denies the truth of the allegations of para. 33; and specifically denies that Complaint was entitled to freight forwarder compensation.

34. Admits that copies of individual bills of lading for shipments for which Complainant sought compensation along with reference charts for each shipment and a separate summary of the applicable total charges and freight forwarding charges for those bills of lading was enclosed with the Second Demand and except as so admitted denies the truth of the allegations of para. 27; and specifically denies that Complainant was entitled to freight forwarding compensation.

Third Demand for Compensation

35. Admits that a Third Demand for Compensation was made by Complainant on or about January 13, 2016 and except as so admitted denies the truth of the allegations of para. 35; and specifically denies that Complainant was entitled to freight forwarding compensation.

36. Admits that the Third Demand included the previously demanded sum of \$203,180.86 and subsequent alleged freight forwarding charges in the amount of \$49,596.03 for a total of \$252,776.89 together with 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fee and/or surcharges related to certain Ford shipments placed on Respondent's vessel not referenced in plaintiff's First or Second Demand and except as so admitted denies the truth of the allegations of para. 36; and specifically denies that

Complainant is entitled to such freight forwarding compensation since it did not perform freight forwarding services on behalf of Respondent.

37. Admits that all additional shipment which freight forwarder compensation was sought in the Third Demand took place within 6 months of the service of the Third Demand and except as so admitted denies the truth of the allegations of para. 37; and specifically denies that Complainant is entitled to freight forwarder compensation since it did not perform freight forwarding services on behalf of Respondent.

38. Admits that a Certification by Denise Traynor was enclosed with the Third Demand and except as so admitted denies the truth of the allegations of para. 38; and specifically denies that Complainant was entitled to freight forwarding compensation.

39. Admits that with the Third Demand was Complainant's F.M.C. Ocean Transportation Intermediary/Ocean Freight Forwarder and except as so admitted denies the truth of the allegations of para. 39 and specifically denies that Complainant was entitled to freight forwarder compensation.

40. Admits that copies of individual bills of lading for shipments for which Complainant sought compensation along with reference charts for each shipment and a separate summary of the applicable total charges and freight forwarding charges for those bills of lading was enclosed with the Third Demand and except as so admitted denies the truth of the allegations of para. 40 and specifically denies that Complainant was entitled to freight forwarding compensation.

41. Admits the truth of the allegations of para. 41 but specifically denies that Complainant was entitled to freight forwarding compensation.

V. STATEMENT OF VIOLATIONS

42. Admits the truth of the allegations of para. 42 except denies that it violated the statute.

43. Admits the truth of the allegations of para. 43 except denies that it violated the statute.

44. Admits the truth of the allegations of para. 44 except denies that it violated the statute.

45. Admits the truth of the allegations of para. 45 except denies that it violated the regulation.

46. Admits the truth of the allegations of para. 46 except denies that it violated the statute.

47. Admits that it has refused to compensate the Complainant and except as so admitted denies the truth of the allegations of para. 47; and specifically denies that Complainant performed any freight forwarding service, that it was entitled to freight forwarding compensation, and that it violated the statute or regulation.

VI. DAMAGES

48. Denies the truth of the allegations of para. 48.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 49.

50. Denies the truth of the allegations of para. 50.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 51.

VII. PRAYER FOR RELIEF

52. Admits that ADR procedures were not used prior to filing of the Complaint and except as so admitted denies the truth of the allegations of para. 52.

53. Denies the truth of the allegations of para. 53.

54. Denies the truth of the allegations of para. 54.

55. Denies the truth of the allegations of para. 55.

56. Denies the truth of the allegations of para. 56.

57. Respondent requests that a hearing in this matter be held in the Metropolitan New York area, or alternatively, in Washington, D.C.

58. Denies the truth of the allegations of para. 58.

VIII. AFFIRMATIVE DEFENSES

First: The Complainant did not perform any freight forwarding services and is not entitled to any of the compensation it claims.

Second. The compensation claimed by Complainant would unjustly enrich it since Complainant performed no freight forwarding services.

Third: The compensation claimed by complainant is unsupported by consideration since Complainant performed no freight forwarding services.

Respondent asks that verified complaint be dismissed and that it be awarded its costs and disbursements incurred in the defense of this case.

Dated: March 3, 2016

Respectfully submitted,

Cichanowicz Callan Keane & De May, LLP
50 Main Street, Suite 1045
White Plains, NY 10606
(212) 344-7042
Attorneys for Respondent
NYK LINE (NORTH AMERICA) INC.

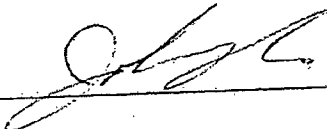
By: Paul M. Keane
Paul M. Keane

VERIFICATION

STATE OF NEW JERSEY, COUNTY OF HUDSON, SS:

John Grbic, being duly sworn, deposes and says:

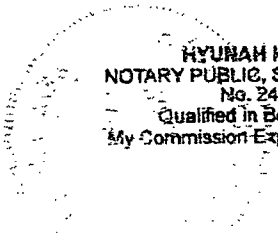
I am the Senior Director of RoRo Trade for Respondent, NYK Line (North America) Inc. I have read the foregoing answer and know its contents. The same is true and correct to the best of my knowledge. As to those matters stated to be alleged on information and belief, I believe then to be true based upon facts, records, and/or other pertinent information in Respondent's files.



John Grbic,

Subscribed and sworn to
before me on March 4, 2016




HYUNAH K. CHUNG
NOTARY PUBLIC, State of New Jersey
No. 2417911
Qualified in Bergen County
My Commission Expires Feb. 28, 2017

VERIFICATION OF SERVICE

Pursuant to 28 U.S.C. 1746(2), I, PAUL M. KEANE, verify under penalty of perjury that the following is true and correct.

On March 4, 2016, I served the prefixed notice of appearance and verified answer of Respondent, NYK Line (North America), Inc., on the Complainant by sending a true and complete copy of same to Complainant's attorneys by courier, postage prepaid:

Law Offices of Thomas J. Wagner, LLC
8 Penn Center, 6th Floor
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103
Attn: Thomas J. Wagner, Esq.

Executed on March 4, 2016

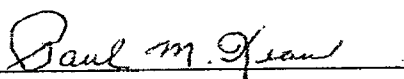

PAUL M. KEANE

EXHIBIT H

**PUBLIC VERSION -
Confidential materials
excluded.**

**PUBLIC VERSION -
Confidential materials
excluded.**

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excluded.**

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Confidential materials
excluded.**

Exhibit I

THE FEDERAL MARITIME COMMISSION
800 North Capitol Street, NW, Washington, D.C.

D. F. YOUNG, INC., Complainant, v. NYK LINE (NORTH AMERICA) INC., Respondent.

DOCKET NO. 16-02

RESPONDENT'S MOTION TO AMEND
ITS ANSWER

A. RELIEF REQUESTED BY THIS MOTION

Respondent moves for leave to serve an amended answer in the form attached to this motion.

B. RULE 502.71(a) STATEMENT

As reported in Part VI of the Parties August 19, 2016 Joint Status Report:

Respondent intends to move early next week to amend its Answer to the Complaint. Based on the draft of such motion provided by Respondent, Complainant does not consent to Respondent's requested amendment.

C. NATURE OF THIS CASE

This is a claim for unpaid freight forwarder compensation. Complainant is a licensed freight forwarder. Respondent is sued as common carrier of goods by water. Complainant has supplemented its alleged damages to \$461,000.00.

D. HISTORY OF THIS CASE

1. The Docket Sheet shows:

- 01/29/2016: Verified Complaint filed.
 - 03/08/2016: Verified Answer filed.
 - 03/24/2016: Order Establishing Discovery Deadlines
 - 05/26/2016: Order Amending Discovery Deadline to September 16, 2016.
2. There has been voluminous documentary discovery.
 3. One witness from each of Complainant and Respondent has been deposed. Up to ten more party and non-party depositions are contemplated including three to six nonparty depositions during August 24-26 in Detroit.

E. AUTHORITIES RELIED ON IN THIS MOTION

1. Rule 66(a) [46 C.F.R. 502.66] provides in relevant part:

Amendments or supplements to any pleading (complaint, Order of Investigation and Hearing, counterclaim, crossclaim, third-party complaint, and answers thereto) will be permitted or rejected, either in the discretion of the Commission or presiding officer.
2. *Tak Consulting Engrs. V. Bustani*, 1998 WL 940845, at *7-8 (F.M.C. Oct.22, 1998) (Pleadings in administrative proceedings are easily amendable, even more so than in federal courts, and are not considered to be critically important. Rather they are general notice-giving instruments that allow respondents to prepare their defense.)

3. *Barbeau v. M. Anderson, etc.*, 1991 WL 382895, at *2 (F.M.C. May 16, 1991) (FMC Rules governing amendments are flexible and amendments are liberally allowed).)
4. Rule 12 [46 C.F.R. 502.12] ("In proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice.")
5. *Kontrick v. Ryan*, 540 U.S. 443, 459-60 (2004) (An answer may be amended to include an inadvertently omitted affirmative defense, and even after the time to amend of course has passed, leave to amend shall be freely given when justice so requires).
6. *Forman v. Davis*, 371 U.S. 178, 181-82 (1962) (Pleading is not a game of skill in which one misstep by counsel may be decisive to the outcome. The purpose of pleading is to facilitate a proper decision on the merits. Absent any apparent or declared reason such as undue delay, bad faith, dilatory motive, undue prejudice, or futility of amendment, leave to amend should be freely given.).

F. SPECIFIC AMENDMENTS BEING REQUESTED

If leave is granted, Respondent would amend its original answer as follows:

1. Paragraph IV.A.8 would be amended to delete, "applicable to the shipments in question."
2. The Affirmative Defenses would be amended to add a fourth that the shipments at issue in this case were Service Contract shipments, not tariff

shipments and therefore do not qualify for freight forwarder compensation.

G. FACTUAL BACKGROUND

1. Claims for freight forwarder compensation are governed by 46 C.F.R. 515.42.
2. Under that Regulation, a common carrier may not pay compensation to a forwarder unless, among other things, it is provided for in the carrier's tariff. Reg. 515.42(b). A forwarder is forbidden from accepting compensation other than what is provided by the tariff. Reg. 515.42(d).
3. When we filed Respondent's answer, we were under the impression that the shipments for which Complainant sought compensation were pursuant to a forwarder compensation tariff incorporated into the relevant Service Contract.
4. We have since learned that the Service Contract did not incorporate that tariff and the tariff does not say that it applies to shipments under a Service Contract. The Service Contract contains a merger clause [Sect. 13] that it supersedes all tariffs not expressly incorporated. The existence of that Service Contract is indisputable as is the fact that the Service Contract contains no provision for freight forwarder compensation. It is Respondent's position that none of its tariffs provide for compensation for non-tariff/Service Contract shipments. Those facts would establish a defense to Complainant's claim.

5. The amendment should be granted for the following reasons.

- (a) Complainant will suffer no prejudice. No rights or claims over have become time barred or been otherwise lost since the original answer was filed, nor have any relevant witnesses become unavailable as a result.
- (b) The proposed affirmative defense was referred to in Respondent's Answer to Complainant's Request for Admissions served in April of this year. Answer 3 says in part:

... the shipments in question were not shipped pursuant to any tariff or tariff rates but were shipped pursuant to a Service Contract between Respondent and Ford Motor Company ...
- (c) There will be no need for additional documentary discovery. Each of the shipments generated a finite set of documents, and these documents—or representative samples—have already been produced.
- (e) The amendment will simply allow an alternative theory of defense and conform the allegation of the answer to the known facts.

H. REQUEST FOR RELIEF

Respondent asks that its motion be granted.

Dated: White Plains, NY, August 23, 2016

CICHANOWICZ CALLAN KEANE & De MAY, LLP
50 Main Street, Rm. 1045, White Plains, NY 10606
212-344-7042
pkeane@cckd-ny.com
jdemay@cckd-ny.com
Attorneys for Respondent

By: Paul M. Keane
Paul M. Keane
(Signed with authority by J. De May)

By: Joseph De May, Jr.

Proposed Amended Answer

BEFORE THE U.S. FEDERAL MARITIME COMMISSION

DOCKET NO.: 16-02

D. F. YOUNG, INC.,

1235 Westlakes Drive
Suite 255
Berwyn, PA 19312

COMPLAINANT

v.

NYK LINE (NORTH AMERICA) INC.,

300 Lighting Way
5th Floor
Secaucus, NJ 07094

RESPONDENT

AMENDED VERIFIED ANSWER

Paul M. Keane
Joseph De May, Jr.
Cichanowicz Callan Keane & De May, LLP
50 Main Street, Suite 1045
White Plains, NY 10606
(212) 344-7042
Attorneys for Respondent

Respondent, NYK LINE (NORTH AMERICA) INC. ("Respondent"), files this Amended Verified Answer to the Verified Complaint of Complainant, D. F. YOUNG, INC., and alleges as follows:

I. COMPLAINANT

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 1.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 2.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 3.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 4.

II. RESPONDENT

5. Admits the allegations of para. 5 except denies that it is organized or exists under the laws of the State of New York.

6. Admits that Nippon Yusen Kaisha is an ocean common carrier (VOCC) as defined and described in 46 U.S.C. §§ 40102(6) and 40102(17), as well as 46 C.F.R. §§ 515.26 and (1), and that Respondent is the U.S. representative of Nippon Yusen Kaisha in North America, and except as so admitted, denies the truth of the allegations of para. 6.

III. JURISDICTION

7. Denies the truth of the allegations of para. 7.

IV. STATEMENT OF FACTS AND MATTERS COMPLAINED OF

A. TARIFFS

8. Admits that Respondent had in effect its Tariff NYKS-156 and except as so admitted denies the truth of the allegations of para. 8.

9. Denies the truth of the allegation of para. 9 and specifically denies that the language quoted therein was ever in NYK Tariff NYKS-156.

10. Denies the truth of the allegation of para. 10 and specifically denies that the language quoted therein was ever in NYK Tariff NYKS-156.

11. Denies the truth of the allegation of para. 11 and specifically denies that the language quoted therein was ever in NYK Tariff NYKS-156.

B. COMPLAINANT FREIGHT FORWARDING

12. Denies the truth of the allegations of para. 12.

13. Admits that on or about April 2, 2015, Complainant and Respondent entered into an agreement to allow Complainant on behalf of Ford to print bills of lading remotely and except as so admitted denies the truth of the allegations of para. 13; and specifically denies that "transportation of shipments from Ford" was to be "by Complainant."

14. Admits that there were negotiations in regard to the Agreement and further admits that the Agreement sets forth the complete understanding of the parties, and except as so admitted denies the truth of the allegations of para. 14 and specifically denies that Respondent ever agreed to pay Complainant brokerage or freight forwarder compensation.

15. Admits that the Agreement included a clause which stated inter alia "this Agreement sets forth the complete understanding and agreement of the parties and can be amended only in writing signed by the party against whom enforcement is sought." Except as so admitted denies the truth of the allegations of para. 15.

16. Denies the truth of the allegations of para. 16 and specifically denies that Complainant performed any freight forwarding services on behalf of Respondent.

17. Admits that Complainant remotely printed bills of lading related to the 4 shipments on behalf of Ford and except as so admitted denies the truth of the allegations of para. 17.

18. Denies knowledge or information sufficient to form a belief as to the truth of allegations of para. 18.

19. Denies knowledge or information sufficient to form a belief as to the truth of allegations of para. 19.

20. Denies the truth of the allegations of para. 20 and specifically denies that the Complainant performed any freight forwarding services on behalf of Respondent in regard to the Ford shipments.

21. Denies the truth of the allegations of para. 21.

22. Admits that Respondent has provided no compensation to Complainant for freight forwarding services and except as so admitted denies the truth of the allegations of para. 22; and specifically denies that Complainant performed any freight forwarding services on behalf of Respondent.

C. DEMAND FOR COMPENSATION

First Demand for Compensation

23. Admits that on or about September 24, 2015, Complainant, through its counsel, served Respondent with a Demand ("The First Demand") for freight forwarding compensation in the amount of \$129,592.28 plus 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fee and/or surcharges related to certain Ford shipments placed on Respondent's vessel pursuant to the terms of Rule 9 of Respondent's applicable tariff, 46 C.F.R §§ 515.41 515.42 and 46 U.S.C §§ 40904 and 41102 et seq., and except as so admitted denies the truth of the allegations of para. 22; and specifically denies that Complainant was entitled to such freight forwarding compensation.

24. Admits that a Certification by Denise Traynor was enclosed with the First Demand and except as so admitted denies the truth of the allegations of para. 24; and specifically denies that Complainant was entitled to freight forwarding compensation.

25. Admits that with the First Demand was Complainant's F.M.C. Ocean Transportation Intermediary/Ocean Freight Forwarder License and except as so admitted denies the truth of the allegations of para. 25; and specifically denies that Complaint was entitled to freight forwarder compensation.

26. Admits that a copy of Complainant's License for Customhouse Broker from the U.S. Treasury Department, Bureau of Customs was enclosed with the First Demand and except as so admitted denies the truth of the allegations of para. 26; and specifically denies that Complainant is entitled to freight forwarding compensation.

27. Admits that copies of individual bills of lading for shipments for which complainant sought compensation along with reference charts for each shipment and a

separate summary of the applicable total charges and freight forwarding charges for those bills of lading was enclosed with the First Demand and except as so admitted denies the truth of the allegations of para. 27; and specifically denies that Complainant was entitled to freight forwarding compensation.

28. Admits the truth of the allegations of para. 28.

Second Demand for Compensation

29. Admits that a Second Demand for Compensation was made by Complainant on or about December 22, 2015 and except as so admitted denies the truth of the allegations of para. 29; and specifically denies that Complainant was entitled to freight forwarding compensation.

30. Admits that the Second Demand included the previously demanded sum of \$129,592.28 and subsequent alleged freight forwarding charges in the amount of \$73,588.58 for a total of \$203,180.86 together with 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fee and/or surcharges related to certain Ford shipments placed on Respondent's vessel not referenced in plaintiff's First Demand and except as so admitted denies the truth of the allegations of para. 30; and specifically denies that Complainant is entitled to such freight forwarding compensation since it did not perform freight forwarding services on behalf of Respondent.

31. Admits that all additional shipments for which freight forwarder compensation was sought in the Second Demand took place within 6 months of the service of the Second Demand and except as so admitted denies the truth of the allegations of para. 31; and specifically denies that Complainant is entitled to freight

forwarder compensation since it did not perform freight forwarding services on behalf of Respondent.

32. Admits that a Certification by Denise Traynor was enclosed with the Second Demand and except as so admitted denies the truth of the allegations of para. 27; and specifically denies that Complainant was entitled to freight forwarding compensation.

33. Admits that with the Second Demand was Complainant's F.M.C. Ocean Transportation Intermediary/Ocean Freight Forwarder and except as so admitted denies the truth of the allegations of para. 33; and specifically denies that Complaint was entitled to freight forwarder compensation.

34. Admits that copies of individual bills of lading for shipments for which Complainant sought compensation along with reference charts for each shipment and a separate summary of the applicable total charges and freight forwarding charges for those bills of lading was enclosed with the Second Demand and except as so admitted denies the truth of the allegations of para. 27; and specifically denies that Complainant was entitled to freight forwarding compensation.

Third Demand for Compensation

35. Admits that a Third Demand for Compensation was made by Complainant on or about January 13, 2016 and except as so admitted denies the truth of the allegations of para. 35; and specifically denies that Complainant was entitled to freight forwarding compensation.

36. Admits that the Third Demand included the previously demanded sum of \$203,180.86 and subsequent alleged freight forwarding charges in the amount of

\$49,596.03 for a total of \$252,776.89 together with 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fee and/or surcharges related to certain Ford shipments placed on Respondent's vessel not referenced in plaintiff's First or Second Demand and except as so admitted denies the truth of the allegations of para. 36; and specifically denies that Complainant is entitled to such freight forwarding compensation since it did not perform freight forwarding services on behalf of Respondent.

37. Admits that all additional shipment which freight forwarder compensation was sought in the Third Demand took place within 6 months of the service of the Third Demand and except as so admitted denies the truth of the allegations of para. 37; and specifically denies that Complainant is entitled to freight forwarder compensation since it did not perform freight forwarding services on behalf of Respondent.

38. Admits that a Certification by Denise Traynor was enclosed with the Third Demand and except as so admitted denies the truth of the allegations of para. 38; and specifically denies that Complainant was entitled to freight forwarding compensation.

39. Admits that with the Third Demand was Complainant's F.M.C. Ocean Transportation Intermediary/Ocean Freight Forwarder and except as so admitted denies the truth of the allegations of para. 39 and specifically denies that Complaint was entitled to freight forwarder compensation.

40. Admits that copies of individual bills of lading for shipments for which Complainant sought compensation along with reference charts for each shipment and a separate summary of the applicable total charges and freight forwarding charges for those bills of lading was enclosed with the Third Demand and except as so admitted

denies the truth of the allegations of para. 40 and specifically denies that Complainant was entitled to freight forwarding compensation.

41. Admits the truth of the allegations of para. 41 but specifically denies that Complainant was entitled to freight forwarding compensation.

V. STATEMENT OF VIOLATIONS

42. Admits the truth of the allegations of para. 42 except denies that it violated the statute.

43. Admits the truth of the allegations of para. 43 except denies that it violated the statute.

44. Admits the truth of the allegations of para. 44 except denies that it violated the statute.

45. Admits the truth of the allegations of para. 45 except denies that it violated the regulation.

46. Admits the truth of the allegations of para. 46 except denies that it violated the statute.

47. Admits that it has refused to compensate the Complainant and except as so admitted denies the truth of the allegations of para. 47; and specifically denies that Complainant performed any freight forwarding service, that it was entitled to freight forwarding compensation, and that it violated the statute or regulation.

VI. DAMAGES

48. Denies the truth of the allegations of para. 48.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 49.

50. Denies the truth of the allegations of para. 50.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 51.

VII. PRAYER FOR RELIEF

52. Admits that ADR procedures were not used prior to filing of the Complaint and except as so admitted denies the truth of the allegations of para. 52.

53. Denies the truth of the allegations of para. 53.

54. Denies the truth of the allegations of para. 54.

55. Denies the truth of the allegations of para. 55.

56. Denies the truth of the allegations of para. 56.

57. Respondent requests that a hearing in this matter be held in the Metropolitan New York area, or alternatively, in Washington, D.C.

58. Denies the truth of the allegations of para. 58.

VIII. AFFIRMATIVE DEFENSES

First: The Complainant did not perform any freight forwarding services and is not entitled to any of the compensation it claims.

Second. The compensation claimed by Complainant would unjustly enrich it since Complainant performed no freight forwarding services.

Third: The compensation claimed by complainant is unsupported by consideration since Complainant performed no freight forwarding services.

Fourth: The shipments at issue in this case were Service Contract shipments, not tariff shipments and therefore do not qualify for freight forwarder compensation under 46 CFR 515.42 or otherwise. The Service Contract did not provide for freight forwarder compensation and neither incorporated nor was governed by any tariff provision providing for freight forwarder compensation.

Respondent asks that verified complaint be dismissed and that it be awarded its costs and disbursements incurred in the defense of this case.

Dated: White Plains, NY, August ____, 2016

Respectfully Submitted,
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50 Main Street, Rm. 1045, White Plains, NY 10606
Tel: (212) 344-7042 | Email: pkeane@cckd-ny.com
Attorneys for Respondent

By: _____
Paul M. Keane

VERIFICATION

STATE OF NEW JERSEY, COUNTY OF HUDSON, SS.:

John Grbbuc, being duly sworn, deposes and says:

I am the Senior Director of Ro-Ro Trade for Respondent, NYK Line (North America) Inc. I have read the foregoing answer and know its contents. The same is true and correct to the best of my knowledge. As to those matters stated to be alleged on information and belief, I believe them to be true based upon facts, records, and/or other pertinent information in Respondent's files.

John Grbic

Subscribed and sworn to

Before me on August ____, 2016
